In the High Court of Judicature for Rajasthan

Jaipur Bench

**

Cr. Msc. Petition No.1768/2007
Mahendra Singh ***Versus*** State

Date of Order ::: 14/11/07

Hon'ble Mr. Justice Ajay Rastogi

Mr. Anshuman Saxena for petitioner (accused)
Mr. Arun Sharma, Public Prosecutor.

Petitioner while undergoing custodial sentence imposed in different criminal cases has filed instant petition U/s 482 read with S.427, CrPC with the prayer to run sentences passed in three cases concurrently instead of consecutive.

Three criminal cases {(1) 352/01 (349/90); (2) 778/02 & (3) 441/02) were registered against petitioner and on his having pleaded guilty of offences charged, during trial, he was convicted & sentenced by Additional Chief Judicial Magistrate, Lalsot (Dausa) vide judgments separately passed on 05/05/07 ad infra:

(1) Cr. Case No.352/01 (349/90)
(FIR-112/89 dt.05/05/89)

U/Ss 457, IPC – 6 months' SI with a fine of Rs.200/- (in default, 15 days SI)
U/Ss 380, IPC – 6 months' SI with a fine of Rs.200/- (in default, 15 days SI)

(2) Cr. Case No.778/2002

(FIR-91/90 dt.09/05/90)

U/S 3/25 Arms – 6 months' SI with a fine of Rs.300/-

Act (in default, 15 days SI)

(3) Cr. Case No.441/2002

(FIR-399/94 dt.09/12/94)

U/S 3/25 Arms – 6 months' SI with a fine of Rs.300/-
Act (in default, 15 days SI)

Against aforesaid judgments of three convictions & sentences, petitioner preferred three appeal Nos.04/07 (50/07); 02/07 (48/07); & 03/07 (49/07), which were dismissed by Addl. Sess. Judge (Fast Track), Bandikui (Dausa Hqr) vide judgments dt.29/08/07 only on premise that appeals were time barred by one month & one day. Even pendente appeals, petitioner also moved applications dt.18/08/07 U/s 427 CrPC, seeking direction for making sentences impugned to run concurrently but were dismissed by appellate Court vide judgments dt.29/08/07 on the premise that since appeals were dismissed holding it to be time barred, no orders can be passed thereon U/s 427 CrPC. Hence this petition.

Basic & foremost contention urged by Counsel for petitioner is that despite convictions & sentences passed on one and the same day by learned trial Judge vide judgments impugned, both the trial and appellate Judge failed to invoke powers U/s 427, CrPC for making these impugned sentences to run concurrently and that apart, appellate Judge declined to entertain his appeals only on premise of appeals

being time barred. In support, Counsel placed reliance upon the decisions of Full Bench of Madhya Pradesh High Court in **Sher Singh Vs. State of M.P. (1989 CrLJ 632)** and so also of this Court in **Paramjeet Singh Vs. State (2007 CrLJ 591)**.

Public Prosecutor while supporting orders impugned submits that petitioner committed such offences repeatedly and being habitual offenders for offence of Section 3/25 of Arms Act, he was convicted twice – no lenient view is required to be considered in the facts of instant case.

This Court has considered rival contentions of both the parties and with their assistance, pondered over material on record. Section 427, CrPC reads ad infra:

> **"427. Sentence of offender already sentenced for another offence:**
> **(1)** When a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment, to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence;
>
> Provided that where a person who has been sentenced to imprisonment by an order under sec. 122 in default of furnishing

> security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the making of such order the latter sentence shall commence immediately.
>
> **(2)** When a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence. ”

Section 427 CrPC envisages that when a person already undergoing sentence of imprisonment is sentenced on a subsequent conviction to imprisonment, it shall commence at the expiry of imprisonment previously sentenced unless the Court directs subsequent imprisonment to run concurrently. Thus in the absence of a specific order by Court in subsequent case, normally the sentences are to run consecutively.

In view of provisions of S.427, CrPC, Court may direct subsequent sentence of imprisonment to run concurrently with previous substantive sentence of imprisonment after taking note of facts of the case while passing substantive sentence.

In instant case, neither trial Court while passing substantive sentences nor appellate court at the time of deciding appeals, passed such direction invoking powers U/s 427 CrPC; therefore, question for

consideration arises as to whether this Court in its inherent powers U/s 482, CrPC, can exercise powers U/s 427(1) CrPC when trial/appellate or Revisional Court failed to do so.

Alike issue came up for consideration before Full Bench of Madhya Pradesh High Court in **Sher Singh Vs. State of M.P.(1989 CrLJ 632)** while examining scope of Section 427 & 482, CrPC finally observed ad infra:

> "**5.** The consensus of judicial opinion of different High Courts seems to be that inherent powers of the High Court can be invoked under section 482 even if the trial court or the appellate or revisional court has not exercised its discretion under S.427(1) of the Code. **The inherent powers of the High Court not in any way fettered by the provisions of S.427(1) and it can be invoked at any stage even if there is no such order passed under S.427(1) by the trial Court or appellate or revisional court and even though the conviction has become final**..."

In the light of decision (supra), it is manifest that the trial/appellate Court having failed to exercise powers, and there is no order U/s 427(1), CrPC, besides convictions passed against petitioner have become final in view of his appeals being dismissed, powers of this Court are not restricted to secure

ends of justice keeping in view facts of the case.

In instant case, indisputably, petitioner has been facing ordeal of litigation for incidents alleged to have taken place on 05/05/89, 09/05/90 & 09/12/94 and keeping in view nature of offences U/s 457 & 380, IPC and 3/25 of Arms Act, in three different criminal cases (supra), where petitioner on plea of guilt raised pendente trial, has been sentenced to undergo imprisonment for six months only on each count besides fine of Rs.200/- or Rs.300/- as the case may be, by the same trial Judge vide judgments passed on the same day. That apart, petitioner was 30 years of age at the time of commission of alleged offences and for charge U/s 3/25 Arms Act, allegation was that he was found in possession of fire-arms without license, to which prosecution produced one witness but was declared hostile although proved arrest of the petitioner.

As per chart mentioned in memo of petition, petitioner has already served out sentences ad infra:

(1) Cr. Case No.352/01 (349/90)
(FIR-112/89 dt.05/05/89)

(a) from 24/05/90 to 13/07/90 (1 month 19 days)
(b) from 16/01/90 to 17/01/90 (2 days)
(c) from 06/06/03 to 27/06/03 (21 days)

(2) Cr. Case No.778/2002
(FIR-91/90 dt.09/05/90)

(a) from 28/05/90 to 13/07/90 (1 month 15 days)
(b) from 06/06/03 to 27/06/03 (21 days)

(c) from 28/03/07 till date

3) Cr. Case No.441/2002

(FIR-399/94 dt.09/12/94)

(a) from 28/03/07 till date

Petitioner is languishing in jail since 28/03/07 for maximum sentence of six months on each count in different three criminal cases besides having already served out substantive period of sentences (supra) during trial and pendente lis. Taking an over-all conspectus of material on record, in the opinion of this Court, to secure ends of justice, it is appropriate to direct substantive sentences for offences in different three criminal cases (supra) to run concurrently.

Consequently, misc. petition succeeds and is hereby allowed. It is ordered that sentences of imprisonment awarded upon petitioner Mahendra Singh vide three judgments (Ann.1 to 3) dt.05/05/07 in Cr. Case Nos.352/01 (349/90); 778/02; & 441/02 as upheld vide appellate judgments dt.29/08/07 shall run concurrently, but sentence of fine shall be paid in each case and sentences in default of fine shall run consecutively i.e., One after another.

A copy of this order be sent forthwith to the trial Court for compliance.

(**Ajay Rastogi), J.**